

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

| | | |
|----------------------------------|---|--------------------|
| ANTHONY TREVINO PATE, |) | |
| |) | |
| Petitioner, |) | |
| |) | 1:10CV585 |
| v. |) | 1:06CR478-3 |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on March 17, 2011, was served on the parties in this action. No objections were filed within the time limits prescribed by § 636.

The court hereby adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Petitioner's claim that his attorney erroneously advised him to reject the government's plea offer and proceed to trial be referred to Magistrate Judge P. Trevor Sharp for an evidentiary hearing. The evidentiary hearing is scheduled for Tuesday, August 16, 2011, at 10:30 a.m. in Courtroom 1A, Greensboro. Attorney Robert L. McClellan is appointed

to represent Petitioner. The government is responsible for producing Petitioner at said hearing.

IT IS FURTHER ORDERED that Petitioner's remaining claims be, and the same hereby is, dismissed.

This the 20th day of June, 2011.

/s/ N. Carlton Tilley, Jr.

Senior United States District Judge